

ENTERED

March 29, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL JON STEELE, §
(TDCJ-CID #573335) §
Plaintiff, §
§
vs. § CIVIL ACTION H-17-0828
§
OFFICER DAVIS, *et al.*, §
§
Defendants. §

MEMORANDUM ON DISMISSAL

Michael Jon Steele, a Texas Department of Criminal Justice inmate, sued in March 2017, alleging civil rights violations resulting from the use of excessive force. Steele, proceeding pro se and *in forma pauperis*, sues (fnu) Davis, Correctional Officer V; K. Strong, Assistant Warden; and B. Smith, Warden.

The threshold issue is whether Steele's claims should be dismissed as barred by the three-strikes provision of 28 U.S.C. § 1915(g). The court concludes that Steele's claims are barred and should be dismissed for the reasons stated below.

I. Plaintiff's Allegations

Steele alleges that on November 15, 2016, Officer Davis struck him with a belt on his buttock. He claims that Warden Strong and Assistant Warden Smith should have known about Officer Davis's mental status based on her actions on other occasions.

Steele seeks to compel all prison officials to have a psychological evaluation to determine if they can work with inmates who have mental problems. He further seeks the restoration of forfeited good time credits since July 7, 1990 through January 13, 2006. He seeks compensatory

damages of \$160,000.00. He seeks additional compensation of \$45.00 per day for twenty-one years.

II. Analysis

A prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Steele's litigation history reveals that he has previously submitted abusive and scurrilous filings in federal court. Prior to filing this action, he had at least two suits and one appeal dismissed as frivolous. *Steele v. Johnson*, Appeal No. 96-21120 (dismissed as frivolous on March 6, 1998)(5th Cir.); *Steele v. Garcia*, 1:96-0213 (dismissed as frivolous on July 14, 1997)(W.D. Tex.); and *Steele v. Collins*, 4:93-1286 (dismissed as frivolous on June 8, 1994)(S.D. Tex.).

In the present case, Steele has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Steele is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

III. Conclusion

Steele's motion to proceed as a pauper, (Docket Entry No. 2), is DENIED. The complaint filed by Michael Jon Steele, (TDCJ-CID #573335), is DISMISSED under 28 U.S.C. § 1915(g).¹

All pending motions are DENIED. Steele is warned that continued frivolous filings may result in

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In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissed all of Adepegba's i.f.p. appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decided to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.

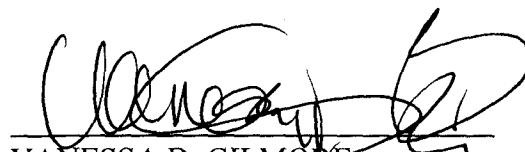
the imposition of sanctions.

The TDCJ-CID shall continue to deduct twenty percent of each deposit made to plaintiff's inmate trust account and forward payments to the court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

- (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;
- (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and
- (3) the District Clerk for the Southern District of Texas, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, on March 24, 2017.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE